

HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE

WRIT PETITION NO.3420 OF 1996

Between:

N.Boomaiah and another

...Petitioners

AND

The Government of Andhra Pradesh,
rep.by its Secretary, Revenue
Department, Secretariat,
Hyderabad, and another

...Respondents

Counsel for the petitioners : Shri M.Rajamalla Reddy

Counsel for the respondents : Government Pleader for
Revenue

Dated: 28th June, 2006

: ORDER :

This petition is illustrative of the most casual, arbitrary and capricious attitude of the Governmental functionaries, namely, Secretary, Revenue Department, Government of Andhra Pradesh and District Treasury Officer, Karimnagar, who threatened Sri Nasam Bhoomaiah (since deceased) with recovery of the amount paid to him in accordance with the scheme framed by the State Government for payment of pension to freedom fighters (hereinafter described as 'the State Scheme').

Shri Nasam Bhoomaiah, who participated in freedom struggle, suffered imprisonment and also went underground, applied for grant of pension under the State Scheme. Vide G.O.Ms.No.2432 dated 1-6-1980, the State Government accorded sanction for payment of pension to him @ Rs.200/- per month with effect from 6-3-1978. The relevant extracts of that G.O. are reproduced below:

“The Government hereby sanction on a provisional basis Freedom Fighter’s pension under the State Scheme to Sri N.Bhoomaiah S/o.Dubbaiah of Cheekodu Village, Sircilla Taluk, Karimnagar District at Rs.200/- (Rupees two hundred only) per month with effect from 6-3-1978.

2. The pension will be for the life time of the recipient. The pension will be subject to review by the Government and it is liable to cancellation or modification without any notice if it is found that it was sanctioned on mistaken grounds or on false representation.

3. The expenditure shall be debited to “288 – Social Security and Welfare-E – Other Social Security and Welfare programmes V.V. 15 – Pension to Freedom Fighters their dependants etc. – SH-01-Pension to Freedom Fighters / their dependants etc. 210-Pensions.

4. Sri N.Bhoomaiah, S/o.Dubbaiah is requested to submit to Government pension papers i.e., his photograph in duplicate,

descriptive roll (i.e., two identification marks) specimen signature left hand thumb and fingers impressions and date of birth duly attested by an officer not below the rank of Tahsildar through Tahsildar concerned for onward transmission to Accountant General, Andhra Pradesh, Hyderabad to enable the Accountant General to issue Pension Payment Order on the concerned Treasury or Sub-Treasury of the Freedom Fighter's Choice. The applicant is requested to furnish the original of the Jail Certificate."

Sri Nasam Bhoomaiah also applied for grant of pension under the Scheme framed by the Government of India which is known as Swatantra Sainik Samman Pension Scheme, 1980 (hereinafter referred to as 'the Central Scheme'). The Government of India accepted the application of Sri Nasam Bhoomaiah and sanctioned Freedom Fighter's Pension to him @ Rs.300/- per month with effect from 1-8-1980 to 31-6-1985 and @ Rs.500/- from 1-6-1985 onwards. The decision of the Government of India was conveyed to Accountant General, Andhra Pradesh, vide Letter No.12/7187/73-FF (HYD.CLLI), paragraphs 1 to 4 of which are extracted below:

"I am directed to convey the sanction of the President to the grant of provisional pension @ Rs.300/- p.m. (Rupees three hundred only) from 1-8-1980 to 31-6-1985 and @ Rs.500/- (Rupees five hundred only) from 1-6-1985 onwards to Shri/Smt.Nasham Bhoomaiah, S/o.Dubbaiah, R/o.Cheekodu, Tq. Sircilla, Karimnagar District.

2. The pension will be for life time of the recipient and would be in addition to pension, if any, sanctioned by the State Govt. This sanction will be subject to review by the President. In particular, it is liable to cancellation/modification without any notice if it is found that it was sanctioned on mistaken grounds/false information. The Govt. have also the full right to the recovery of the wrongly drawn pension to get the pension cancelled.

3. Smt./Sri N.Bhoomaiah is/are his/her spouse(s). In the event of the freedom fighters pre-deceasing his/her/their the latter will be entitled to a family pension of Rs.500/- (Rupees five hundred only) which may be paid to him/her/them from the date following the

death of the pensioner during his/her/their life-time or till remarriage.

4. The expenditure involved will be debitable to the Major Head "2235" B-Social Security & Welfare, B-2-Other Social Security and Welfare Programme B-2(1)(1)-Swatantrata Sainik Samman Pension Scheme in Demand No.42 other Expenditure of the Ministry of Home Affairs for the financial year 1987-88. Necessary funds will be provided in your circle of account by reappropriation in due course."

When Sri Nasam Bhoomaiah approached District Treasury Officer, Karimnagar for payment of pension including the arrears under the Central Scheme, the latter informed him that in view of the sanction of pension under the Central Scheme, he will not be paid pension under the State Scheme and the amount already paid will be recovered. This prompted Sri Nasam Bhoomaiah to file writ petition under Article 226 of the Constitution of India. Luckily for him, a coordinate Bench stayed the recovery from the pension payable to him.

During long pendency of the writ petition (ten years), the respondents have not bothered to file counter-affidavit to controvert the averments contained in the affidavit of Sri Nasam Bhoomaiah who has undertaken the last journey and his widow Smt N.Ramavva is left to fight this petty legal battle.

Sri M.Rajamalla Reddy argued that the action of the respondents to recover the amount of pension paid under the State Scheme should be declared illegal, arbitrary and unjustified because there is no provision in the sanctions accorded by the State Government and the Central Government that the pension payable under the State Scheme would be recovered in the event of sanction of pension under the Central Scheme. Learned counsel then argued that even if such provision is read implicit in the State Scheme, the respondents cannot recover the amount already paid to late Sri Nasam

Bhoomaiah because before deciding to withdraw the benefit of pension payable under the State Scheme, the competent authority did not give him action oriented notice or opportunity of hearing.

The learned Government Pleader relied on Memo No.1428/FF.I/84-1 dated 2-7-1984 sent by Secretary to Government, Revenue Department to District Treasury Officer, Karimnagar requiring the latter to recover the amount paid to the freedom fighter under the State Scheme and argued that the District Treasury Officer did not commit any illegality when he told Sri Nasam Bhoomaiah about recovery of the amount already paid to him. He, however, conceded that before seeking to recover the amount paid to Sri Nasam Bhoomaiah, the concerned authority did not give him notice or opportunity of hearing.

I have thoughtfully considered the respective submissions. Although the writ petition is not articulately drafted, from the tenor of the affidavit filed by Shri Nasam Bhoomaiah, it can be gathered that he has questioned the action of the respondents by describing it as without jurisdiction and totally arbitrary and in the facts and circumstances of the case, I am inclined to read the plea of violation of rules of natural justice as an inherent ground which is available to the petitioner for seeking nullification of the arbitrary and capricious action taken by the Secretary, Revenue Department and District Treasury Officer, Karimnagar. In a case like the present one, the Court is entitled to and is also duty bound to construe the pleadings in a broader perspective and modulate the relief irrespective of frame of the prayer clause. It hardly needs an emphasis that the power vested in the High Court under Article 226 of the Constitution of India is wide and pervasive and the Court can reach injustice irrespective of the status of the person who seeks to perpetuate injustice and the degree of his authority.

A careful reading of G.O.Ms.No.2432, the relevant portions of which have been extracted hereinabove, show that while sanctioning pension under the State Scheme, the Government of Andhra Pradesh did not indicate that the amount of pension payable under that State Scheme will be withdrawn and the amount already paid will be recovered if pension is sanctioned to the beneficiary under the Central Scheme. Likewise, perusal of communication dated 2-8-1997 shows that sanction accorded by the Central Government for payment of pension did not envisage withdrawal of the pension payable under the State Scheme. In the absence of any such enumeration, it is impossible to find any legitimacy in the action of the Revenue Secretary, Government of Andhra Pradesh to instruct the District Treasury Officer to recover the element of pension already paid to Sri Nasam Bhoomaiah under the State Scheme. In my considered view, the direction given by the Revenue Secretary was without jurisdiction and the District Treasury Officer committed grave illegality when he took steps for recovery of the amount of pension already paid to the petitioner.

I am further of the view that the Secretary to the Government, Revenue Department did not have the jurisdiction, power or authority to direct District Treasury Officer to recover the amount paid to Sri Nasam Bhoomaiah under the State Scheme. Undisputedly, the pension was sanctioned to Sri Nasam Bhoomaiah in accordance with the policy framed by the State Government. It has not been shown to the Court that the policy to which reference has been made in G.O.Ms.No.2432 and pursuant to which pension was sanctioned in favour of the petitioner had been modified, amended or withdrawn. Therefore, Secretary concerned could not have suo motu instructed District Treasury Officer to recover the element of State pension already paid to

Shri Nasam Bhoomaiah.

The casualness with which the respondents treated late Nasam Bhoomaiah is evinced from the fact that before seeking to recover the amount of pension already paid to him, neither of the respondents bothered to give him notice and opportunity of hearing. In my considered view, even if the policy framed by the State Government for payment of pension to the freedom fighters had been amended and a provision had been made that the State Pension would be recovered in the event of sanction of pension under the Central Scheme, such an amendment could not have been applied with retrospective effect and, in any case, no recovery could have been effected from the amount payable to Shri Nasam Bhoomaiah without giving him an action oriented notice and opportunity of hearing. Therefore, the decision contained in the communication of Secretary to Government which was sought to be translated into reality by District Treasury Officer, Karimnagar is liable to be declared as wholly arbitrary, unreasonable, unjust and grossly violative of basics of natural justice.

The question whether the rules of natural justice i.e., audi alterim partem is applicable to purely administrative actions and proceedings is no longer res integra and must be answered in affirmative in view of the judgments of the Supreme Court in **State of Orissa v. Dr. (Miss) Binapani Dei**^[1], **Sayeedur Rehman v. State of Bihar**^[2], **Maneka Gandhi v. Union of India**^[3], **S.L.Kapoor v. Jagmohan**^[4], **Swadeshi Cotton Mills v. Union of India**^[5] and **Olga Tellis v. Bombay Municipal Corporation**^[6].

In the result, the writ petition is allowed. The direction contained in letter dated 2-7-1984 sent by Secretary to Government, Revenue Department requiring District Treasury Officer, Karimnagar to recovery the amount of State Pension payable to Sri Nasam Bhoomaiah under

the Central Scheme is declared illegal and quashed. The consequential action taken by District Treasury Officer is also declared illegal and quashed. For dragging a freedom fighter in an unnecessary litigation, the respondents are saddled with costs of Rs.10,000/- (Rupees ten thousand only). This amount shall be paid to the widow of late

Shri Nasam Bhoomaiah within a period of one month from today.

G.S.SINGHVI, CJ

Date: 28.06.2006

kvni/svs/GRR

[\[1\]](#) AIR 1967 SC 1269

[\[2\]](#) AIR 1973 SC 239

[\[3\]](#) AIR 1978 SC 597

[\[4\]](#) AIR 1981 SC 136

[\[5\]](#) AIR 1981 SC 818

[\[6\]](#) AIR 1986 SC 180